

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5557 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHIPATSINH TAPUBHA JHALA

Versus

DISTRICT PANCHAYAT

Appearance:

MR JD AJMERA for Petitioner

MR HS MUNSHAW, for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/10/96

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.H.S.Munshaw, learned Advocate appearing for the respondents. In Special Civil Application No. 2857 of 1995 following order was passed by this Court on 4th May 1995 :

In this petition under Article 226 of the Constitution of India the petitioner has brought

under challenge suspension order dated 31.5.1994 passed by the respondent No.2, while also challenging the show cause notice dated 23-30/3/1995 in the petition. The petitioner has also prayed for interim relief for suspending the implementation and/or enforcement of impugned order of suspension.

Notice was issued returnable on 4.5.1995.

Mr.Munshaw, learned Advocate has appeared in reply to the notice. I have heard both the learned Advocates with regard to main reliefs as well as the interim relief.

In so far as the challenge to the show cause notice is concerned, Mr.Ajmera, learned Advocate for the petitioner submits that the petitioner will give an appropriate reply to the show cause notice and he would not press for the challenge to the show cause notice in this petition at this stage. Mr.Ajmera submits that the petitioner reserves his right to challenge the impugned disciplinary action and the consequent penalty that may be imposed by an appropriate proceedings.

In so far as suspension is concerned, I have heard learned Advocates for the parties. It is the submission of Mr.Munshaw that the petitioner has already challenged the suspension order before the Civil Court and now he is before this Court, although setting out the facts with regard to earlier proceedings. There are certain facts which deserve to be noted for passing the following order. It is submitted by Mr.Ajmera that the petitioner has already sustained two heart-attacks and the petitioner's health is delicate so as not to withstand the suspension in question. It may be noted that the petitioner is also subjected to transfer and the petitioner has also made grievance with regard to such transfer. In the facts of the case, however, at best the following directions can be issued :

The petitioner is directed to make representation against the impugned order of suspension and transfer simultaneously setting out the place/places of transfer in the alternative. He shall set out his circumstances in the application and other grounds for reconsideration of the matter in respect of the

impugned order of suspension and transfer. The concerned authority of the respondents shall decide representation within a period of two weeks from the date of receipt of such representation sympathetically. Till the representation is decided, status-quo as on today shall be maintained.

In view of the aforesaid direction,

Mr.Ajmera craves leave to withdraw this petition.

Leave granted. Notice discharged accordingly. No order as to costs."

2. Thereafter the petitioner made representation as per Annexure : C which resulted in decision as per Annexure : D. Accordingly, the petitioner was transferred to Bhachau by saying that that will be his place of suspension.

3. The purpose of directing the petitioner to make representation was that he had sustained two heart-attacks and his health was stated to be very delicate. His family has settled at Chubadak which is at a distance of about 70 k.mtrs. from Bhachau. His two sons are studying at Bhuj. In that view of the matter the very purpose for which he was required to move a representation to the concerned authority of the respondent is not met when his place of suspension is fixed at Bhachau.

4. I have gone through the Affidavit in Reply. Besides the grievance is made that the petitioner is still working and not in the state of suspension. Hence Mr.Munshaw has also sought for clarification with regard to the petitioner's suspension in case a direction for transferring the petitioner to Bhuj or a place nearby Bhuj, being a place for the petitioner to remain under suspension is issued. Following directions, therefore, are issued bearing in mind the peculiar facts of this case :

The petitioner shall remain suspended from the date on which he is transferred to Bhuj or the place nearby Bhuj. The respondents are directed to issue appropriate orders of such transfer of the petitioner so as to allow the petitioner to remain under suspension at such place. It is made clear that the rights and contentions of the parties which may arise hereafter are not snapped by the aforesaid order.

Subject to these directions Rule is discharged.
Status-quo vacated. No order as to costs.

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